

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANYALE SHARRON TUBBS, #292944

Plaintiff,

Case No. 1:22-cv-588

v.

HON. ROBERT J. JONKER

ANNE CUNNINGHAM, et al.,

Defendants.

/

ORDER APPROVING AND ADOPTING REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Berens's Report and Recommendation, (ECF No. 112), recommending that the Court grant Defendants' Motions for Summary Judgment, (ECF Nos. 83–84). The Court has also reviewed Plaintiff's Objections to the Report and Recommendation, (ECF No. 116), and Defendants Cunningham and Anderson's Response to Plaintiff's Objections, (ECF No. 119). Under the Federal Rules of Civil Procedure, where—as here—a party has objected to portions of a Report and Recommendation, “[t]he district judge has a duty to reject the magistrate judge's recommendation unless, on *de novo* reconsideration, he or she finds it justified.” 12 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3070.2 (3d ed. Apr. 2023 update). Specifically, the Rules provide that:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). *De novo* review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co., Inc.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed *de novo* the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; Plaintiff's objections; and Defendants Cunningham and Anderson's response to Plaintiff's objections. After its review, the Court finds the Magistrate Judge's Report and Recommendation is factually sound and legally supported.

Plaintiff was permitted to proceed *in forma pauperis*. (ECF No. 4). After conducting the requisite review under 28 U.S.C. § 1915(e)(2), Magistrate Judge Berens carefully and thoroughly considered the record and the governing law. The Magistrate Judge recommends that the Court grant summary judgment to Defendants on Plaintiff's Eighth Amendment claims that they were deliberately indifferent to his serious dental needs. Viewing the evidence in the light most favorable to Plaintiff—as it must—the Court agrees that Plaintiff failed to create a triable issue that Defendants violated his Eighth Amendment rights.

As the Magistrate Judge stated, “[w]hile Tubbs experienced [tooth] pain, and one can certainly be sympathetic to his annoyance at the long period required to schedule him for treatment, his complaints [about Tooth No. 19 and several other teeth] were intermittent and addressed with antibiotics and anti-inflammatory drugs” until he could receive treatment. (ECF No. 112 at PageID.1495). Plaintiff also offers nothing beyond conclusory and speculative assertions that the long wait time for treatment necessitated the extraction of Tooth No. 19 and that Defendants subjectively disregarded his dental needs. Plaintiff's Objections have no impact on the Court's analysis because they consist only of immaterial nitpicks and repackaged versions of arguments the Magistrate Judge appropriately rejected.

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation of the Magistrate Judge, (ECF No. 112), is **APPROVED AND ADOPTED** as the opinion of the Court.
2. Plaintiff's claims against Defendants are **DISMISSED WITH PREJUDICE**.
3. For the same reasons that the Court dismisses Plaintiff's Complaint, the Court discerns no good-faith basis for an appeal within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997).
4. This matter is **TERMINATED**.

IT IS SO ORDERED.

Dated: December 20, 2023

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE